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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 13, 2012

10:05 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(Doc# 90, 47) Status Conference RE: Motion Authorizing The Debtors To Continue To Perform Under The Ally Bank Servicing Agreements In The Ordinary Course Of Business.

(CC: Doc no. 509) Debtors' Application Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Authorization to Employ and Retain Dorsey & Whitney LLP as Special Securitization and Investigatory Counsel to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Darren M. Nashelsky on behalf of Residential Capital, LLC..

(CC: Doc no. 512) Debtors' Application for Order Authorizing the Employment and Retention of Rubenstein Associates, Inc. as Corporate Communications Consultant to the Debtors Nunc Pro Tunc to the Petition Date.

(CC: Doc no. 511) Debtors' Application for an Order Authorizing Employment and Retention of Mercer (US) Inc. as Compensation Consultant to the Debtors Nunc Pro Tunc to the Petition Date filed by Darren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 508) Debtors' Application Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Authorization to Employ and Retain Carpenter Lipps & Leland LLP as Special Litigation Counsel to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 510) Debtors' Application Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Authorization to Employ and Retain Orrick, Herrington & Sutcliffe LLP as Special Securitization Transactional and Litigation Counsel to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 506) Debtors' Application Pursuant to Section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rules 2014-1 and 2016-1, for Entry of an Order Authorizing the Retention and Employment of Morrison & Foerster LLP as Bankruptcy Counsel to the Debtors Nunc Pro Tunc to the Petition Date filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 528) Application Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014 for an Order to Retain and Employ Kramer Levin Naftalis & Frankel LLP as Counsel to the Official Committee of Unsecured Creditors of the Debtors, Nunc Pro Tunc, to May 16, 2012 filed by Kenneth H. Eckstein on behalf of Official Committee Of Unsecured Creditors.

(Doc no. 527) Debtors' Application for Order Under Bankruptcy Code Sections 327(a) and 328(a), Bankruptcy Rule 2014(a) and Local Rule 2014-1 Authorizing the Employment and Retention of Curtis, Mallet-Prevost, Colt & Mosle LLP as Conflicts Counsel Nunc Pro Tunc to the Petition Date filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc# 513) Debtors Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals.

(CC: Doc# 514) Debtors Motion for Order Under Bankruptcy Code Sections 105(a), 327 and 330 and Bankruptcy Rule 2014 Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date.

Doc# 531 Debtors' Application Pursuant to 11 U.S.C. Section
327(a) and Fed. R. Bankr. P. 2014 for Authorization to Employ
and Retain Kurtzman Carson Consultants LLC as Administrative
Agent Nunc Pro Tunc to the Petition Date filed by Larren M.
Nashelsky on behalf of Residential Capital, LLC.

Transcribed by: Penina Wolicki
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

eScribers, LLC | (973) 406-2250
operations@escribers.net | www.escribers.net

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A P P E A R A N C E S :

MORRISON & FOERSTER, LLP

Attorneys for Debtors

1290 Avenue of the Americas

New York, NY 10104

BY: LORENZO MARINUZZI, ESQ.

GARY S. LEE, ESQ.

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

Conflicts Counsel for Debtors

101 Park Avenue

New York, NY 10178

BY: MICHAEL A. COHEN, ESQ.

STEVEN J. REISMAN, ESQ.

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U.S. DEPARTMENT OF JUSTICE

Office of the U.S. Trustee

33 Whitehall Street

21st Floor

New York, NY 10004

BY: BRIAN S. MASUMOTO, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Attorneys for Official Creditors' Committee

1177 Avenue of THE Americas

New York, NY 10036

BY: KENNETH H. ECKSTEIN, ESQ.

DOUGLAS MANNAL, ESQ.

RACHAEL L. RINGER, ESQ.

P. BRADLEY O'NEILL, ESQ.

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KIRKLAND & ELLIS LLP

Attorneys for Ally Financial Inc. and Ally Bank

601 Lexington Avenue

New York, NY 10022

BY: CRAIG A. BRUENS, ESQ.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Attorneys for Barclays Bank PLC

Four Times Square

New York, NY 10036

BY: JONATHAN H. HOFER, ESQ.

SIDLEY AUSTIN

Attorneys for Nationstar Mortgage

One South Dearborn

Chicago, IL 60603

BY: JESSICA BOELTER, ESQ. (TELEPHONICALLY)

LARRY NYHAN, ESQ. (TELEPHONICALLY)

FREEBORN & PETERS LLP

Attorneys for Mercer

311 South Wacker Drive

Suite 3000

Chicago, IL 60606

BY: DEVON J. EGGERT, ESQ. (TELEPHONICALLY)

DORSEY & WHITNEY LLP

Proposed Investigatory Counsel to Debtors

50 South Sixth Street

Suite 1500

Minneapolis, MN 55402

BY: THOMAS O. KELLY, III, ESQ.

ALSO PRESENT:

CORLA JACKSON, Pro Se

JOHN DEMPSEY, Mercer (TELEPHONICALLY)

ALAN TESSLER, Rubenstein & Associates (TELEPHONICALLY)

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P R O C E E D I N G S

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THE COURT: Please be seated. We're here in
Residential Capital, LLC, number 12-12020. Mr. Marinuzzi?

MR. MARINUZZI: Good morning, Your Honor. For the
record, Lorenzo Marinuzzi, Morrison & Foerster, proposed
bankruptcy counsel for the debtors.

Your Honor, first of all, thank you for making
yourself and your staff available this morning for a hearing.
And I promise to do my best to move as quickly as possible.

Your Honor, we're here on a number of mostly
uncontested retention applications filed by the debtors and one
filed by the committee, as well as a status conference on the
subservicing matter. And if I proceed in the order in which
matters are listed in the agenda, Your Honor, you'll note that
the retention applications filed by the committee and the
debtors for the financial advisors FTI and Centerview, Moelis
and AlixPartners, have been adjourned to the hearing on the
24th. And Your Honor, if it's okay, we'll skip the status
conference and deal with the retentions, so the professionals
that are here can leave.

Your Honor under uncontested matters is the motion to
approve interim compensation and reimbursement of expenses.
There were changes requested by the committee, which we've
incorporated into the order. I believe chambers has seen a
copy of the marked order, but I'm happy to walk through the

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1 changes if Your Honor would like.

2 THE COURT: No, that is okay. Let me ask, does
3 anybody else wish to be heard with respect to the interim
4 compensation order.

5 All right. It's approved.

6 MR. MARINUZZI: Thank you, Your Honor. The next item
7 on the agenda is the debtors' application to retain under
8 327(a) Kurtzman Carson Consultants, as administrative agents,
9 nunc pro tunc. Your Honor, there was one change requested by
10 the committee to the order. KCC's been retained as the
11 noticing agent, and they have a retainer for expenses, as is
12 provided in the general order. We picked up that retainer
13 concept unintentionally in the order for 327(a), so we just
14 deleted it.

15 THE COURT: Okay.

16 MR. MARINUZZI: There were no objections.

17 THE COURT: Does anybody wish to be heard with respect
18 to the Kurtzman Carson retention?

19 It's approved.

20 MR. MARINUZZI: Thank you, Your Honor. The next item
21 is the motion requesting the -- authorizing the preliminary
22 payment of ordinary-course professionals. Your Honor, there
23 was an objection to the motion filed by the United States
24 Trustee, in particular with respect to the amounts, because we
25 had proposed 75,000 and 750. And in revisiting and scrubbing

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1 the numbers with the company again, we decided that we can work
2 within the request of the U.S. Trustee for 50,000 per month and
3 500,000 dollars over the course of the case. So we've made
4 those changes to the order.

5 There's one other concept that was not in the motion
6 as filed, but it was raised in discussions regarding
7 retentions. And as I'll get to, the professionals on the
8 debtors' side have agreed, whatever retainers they have,
9 they're going to apply to the first fees paid out. And we want
10 to incorporate that concept with respect to ordinary-course
11 professionals, to the extent that they're holding retainers.
12 We'd like them to apply the retainers against the first fees
13 paid; and we've built that into the order.

14 THE COURT: Anybody wish to be heard with respect to
15 the retention of ordinary course professionals?

16 All right, that's granted.

17 MR. MARINUZZI: Your Honor, the next item on the
18 agenda is the debtors' application to retain Curtis Mallet as
19 conflicts counsel.

20 THE COURT: Yes.

21 MR. MARINUZZI: No objections to that motion, Your
22 Honor. Unless Your Honor has any questions, we'd ask that that
23 application be granted.

24 THE COURT: Anybody wish to be heard with respect to
25 the Curtis Mallet retention application?

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1 All right, it's granted.

2 MR. MARINUZZI: Thank you, Your Honor. Under
3 contested matters is the application to retain Morrison &
4 Foerster. The U.S. Trustee filed an objection raising
5 duplication issues that we'll talk about, as it pertains to the
6 327(e) professionals as well, and asked for additional
7 disclosures, which we've made, as did the other professionals.

8 We believe, subject to negotiating a form of order for
9 the United States Trustee that satisfies them on the
10 duplication issue, and we think that a template for that is
11 really set forth in the supplemental declarations provided by
12 the 327(e) professionals, that provides a finer point on the
13 services they're going to be provided, we think we've resolved
14 the U.S. Trustee's objection.

15 THE COURT: Mr. Masumoto?

16 MR. MASUMOTO: Good morning, Your Honor. Brian
17 Masumoto for the Office of the United States Trustee. Counsel
18 is correct. But if I may state for the record, some of the
19 concepts that we had wanted to incorporate. One is with
20 respect to the catchall provision that exists. We're hoping to
21 narrow it down to indicate that any of the, at the moment,
22 undefined services that may be provided for by the
23 professionals would be within the scope of the services that
24 they're hired at this point. Anything beyond that scope,
25 they'd have to get a separate order of the Court.

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1 In addition, we're asking that as they expand their
2 services within the scope of the area for which they're
3 retained, they would file supplemental declarations to indicate
4 that they're doing these additional services.

5 What we're also hoping to work out and include in the
6 order is the concept that with respect -- between and among
7 debtors' counsel and the special counsel, that project
8 categories be as uniform as possible, to allow for a -- to
9 facilitate the review of any potential duplication.

10 THE COURT: I think that's the key. Because at least
11 one -- certainly one of the keys from our standpoint -- "our
12 standpoint" meaning my chambers' -- we do review fee
13 applications quite carefully. When it becomes most difficult
14 is when there's no uniform set of project categories among
15 professionals. So to the extent possible, that should be done.
16 Because it does really help facilitate our review.

17 MR. MASUMOTO: Yes, Your Honor. And we're hoping to
18 incorporate that within the context of the order.

19 THE COURT: All right. Mr. Marinuzzi, where do things
20 stand in terms of trying to negotiate language for the order?

21 MR. MARINUZZI: We just had a conversation this
22 morning, Your Honor.

23 THE COURT: Okay.

24 MR. MARINUZZI: We knew conceptually that we were
25 going to get to the point of just finding the right language.

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1 But I think we've resolved it, subject to the language that
2 we're going to negotiate after the hearing.

3 THE COURT: All right. Anybody else wish to be heard
4 with respect to the Morrison & Foerster retention application?

5 Mr. Eckstein?

6 MR. ECKSTEIN: Your Honor, good morning. Kenneth
7 Eckstein, proposed counsel for the creditors' committee.
8 Judge, generally, we had filed a reservation of rights on a
9 similar point with respect to avoiding duplication. It's a
10 complicated case. There are the need for a lot of different
11 professionals and expertise. And we thought it was just worth
12 noting that I think all parties are going to have to work both
13 on the legal and the financial side to really ensure that there
14 is no duplication and that there's efficiency. I think that's
15 something we have to focus on prospectively.

16 THE COURT: Okay. I mean, one of the things that's a
17 little unusual or a little different in this case is that the
18 debtors expressed from the start, I think with the support of
19 the committee, that ResCap be able to conduct business as
20 usual. Part of their business as usual involves a lot of
21 litigation around the country. The Court's already entered an
22 order lifting the stay as to various types of claims and
23 things. And there are lawyers representing ResCap in those
24 cases. And when I reviewed the retention applications, a
25 number of them are involved in the representation of the

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1 debtors in ongoing litigation.

2 So I certainly -- while the Court is always concerned
3 about proliferation of professionals in a case, I certainly
4 fully understand that the nature of this case requires it, but
5 it also requires the effort to monitor that there isn't
6 unnecessary -- there isn't duplication of effort and that Mr.
7 Marinuzzi, you know, at the end of the day, from the debtors'
8 side, the buck stops with your firm. And if the U.S. Trustee
9 or the Court begins to raise questions about duplication, you
10 and your colleagues are the ones who are going to have to make
11 sure that that doesn't happen. Okay?

12 MR. ECKSTEIN: We're all counting on Morrison &
13 Foerster.

14 THE COURT: Yes, I know.

15 MR. MARINUZZI: Thank you, Your Honor.

16 THE COURT: All right. Anybody else wish to be heard?

17 All right, the Morrison & Foerster retention is
18 approved subject to the Court's review of a proposed order when
19 that's submitted.

20 MR. MARINUZZI: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. MARINUZZI: The next application is the debtors'
23 application to retain Carpenter Lipps & Leland as special
24 counsel under 327 --

25 THE COURT: That's one of the firms I had specifically

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1 in mind, because they're representing the debtors in
2 litigation.

3 MR. MARINUZZI: Yes. On litigation that's been
4 ongoing for years.

5 THE COURT: Right.

6 MR. MARINUZZI: There was one objection. And we'll
7 deal the same way we'll deal with Morrison & Foerster and the
8 other 327(e), with crafting language with the U.S. Trustee.
9 The same resolution will apply to Carpenter --

10 THE COURT: There's also the Lewis application --

11 MR. MARINUZZI: Exactly.

12 THE COURT: -- Lewis objection. It's overruled.

13 MR. MARINUZZI: Thank you, Your Honor.

14 THE COURT: Does anybody else wish to be heard with
15 respect to the Carpenter Lipps & Leland retention application?

16 All right, it's approved, subject again, to reviewing
17 the order.

18 MR. MARINUZZI: Thank you, Your Honor. And that
19 brings us to the debtors' application to retain Dorsey &
20 Whitney as special securitization and investigatory counsel
21 under Section 327(e). Same resolution with the U.S. Trustee,
22 Your Honor.

23 THE COURT: Explain to me a little bit more about what
24 is -- in terms of investigations, what's -- who's doing what
25 among the professionals for the debtor?

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1 MR. MARINUZZI: Your Honor, there were investigations
2 and actions that commenced before the petition date where the
3 company retained, in this case, Dorsey & Whitney. And
4 depending upon how long ago these proceedings began, there was
5 either a great deal of work done or not so much work done. And
6 whatever work had been done, is work that, to the extent
7 Morrison & Foerster is going to take over the work -- now many
8 of these are stayed, but who knows what might happen in the
9 future and how we have to resolve these claims as part of a
10 plan process -- as we progress in the case, I anticipate with
11 respect to the activities and Dorsey & Whitney, that they'll
12 become Morrison & Foerster activities.

13 But we're going to need their cooperation. We're
14 going to need the information they've already obtained,
15 whatever progress has happened in the case to date, for us to
16 actually have a smooth transition from Dorsey & Whitney to
17 Morrison & Foerster.

18 In court today is Tom Kelly, to the extent that Your
19 Honor has any specific questions that I can't answer.

20 THE COURT: Well, one --

21 MR. MARINUZZI: I'm sure he'd be happy to answer them.

22 THE COURT: -- question I have, and this may apply to
23 others. Dorsey & Whitney had a pre-petition retainer at
24 250,000 dollars. What's not clear to the Court is how much of
25 that remains.

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1 MR. MARINUZZI: Your Honor, I don't know. I'll defer
2 to Dorsey & Whitney. I thought it might have been addressed in
3 the supplemental declaration. But if it's not --

4 THE COURT: Maybe it was and I missed it.

5 I guess it is, because I see Mr. Masumoto pointing to
6 it.

7 MR. KELLY: It was addressed, Your Honor --

8 THE COURT: Okay.

9 MR. KELLY: -- in the supplemental declaration. We
10 have not applied any of it, because the case was filed and we
11 hadn't --

12 THE COURT: Right.

13 MR. KELLY: -- done so. We have 227,000 dollars'
14 worth of pre-petition fees and disbursements that we want to
15 apply.

16 THE COURT: Against the 250,000 dollar retainer?

17 MR. KELLY: Right. So we'll have 22,000 left
18 afterwards.

19 THE COURT: Okay. All right, thank you very much.

20 Does anybody else wish to be heard with respect to the
21 Dorsey & Whitney retention application?

22 All right, it's granted.

23 MR. MARINUZZI: Thank you, Your Honor. That brings us
24 to the debtors' application to retain Orrick, Herrington &
25 Sutcliffe under 327(e). Your Honor, the simplest way I could

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1 describe Orrick is that they wrote many of the securitization
2 documents that we're going to need some help analyzing during
3 the case.

4 THE COURT: Okay. Anybody wish to be heard with
5 respect to the Orrick, Herrington & Sutcliffe retention
6 application?

7 All right, it's granted.

8 MR. MARINUZZI: Thank you very much, Your Honor. Your
9 Honor, that brings us to the debtors' application to retain
10 Mercer as compensation consultant. Your Honor, the objection
11 was filed by the U.S. Trustee regarding the payment of
12 attorneys' fees, which was the subject of Your Honor's decision
13 in Borders. I'll turn over the podium to Mr. Masumoto to
14 prosecute his objection.

15 THE COURT: Okay.

16 MR. MASUMOTO: Good morning, Your Honor. Brian
17 Masumoto for the Office of the United States Trustee. Your
18 Honor, with respect to the Mercer application, we had several
19 objections, all of which have been resolved. I just wanted to
20 mention the two, sort of, that remained at the end, were the
21 concept that they're hourly compensa -- their quarter-hour
22 increment in terms of their records. The supplement addresses
23 it in somewhat of a convoluted fashion, but it seems --

24 THE COURT: They ought to change their system to
25 tenths of an hour, but --

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1 MR. MASUMOTO: I understand, Your Honor. But it
2 appears that over fifteen minutes, they'll be rounding down for
3 the first ten, and for the last five, they would round up,
4 which seems to be consistent with the tenths of an hour
5 increment, and avoiding the concern of overbilling to the
6 estate. So that appears to have been resolved.

7 The remaining issue is the one that Mr. Marinuzzi
8 alluded to. And as we have indicated in our papers, as we
9 understand the Court's decision in Borders --

10 THE COURT: Well, I think -- you know, I read your
11 objection. You obviously continued the objection. But I
12 thought you actually went a little too light on it, in the
13 sense that the Borders decision first -- I mean, it was
14 distinguishable from this case, because Borders makes clear
15 that the objection to the Mercer application did not arise
16 until the first fee application. That at the time of the
17 retention the Office of the U.S. Trustee had asserted a general
18 reservation of rights but had not specifically objected to the
19 expense reimbursement provision as being the source of
20 authority for counsel retention.

21 So I think there's more to your objection here than
22 there was in Borders. Now, that, of course, isn't the end of
23 the story. The supplemental declaration submitted answers
24 maybe part of the question. But in the Borders opinion, which
25 I reread again this morning, I focused on let's deal solely

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1 with the reimbursement of outside counsel in connection with
2 retention. I asked, in that opinion, a series of questions
3 about whether the professional in that case and in this case,
4 Mercer, charges its clients both for bankruptcy matters and
5 nonbankruptcy matters for counsel fees in connection with
6 retention. I specifically raised the question in the Borders
7 decision whether it is or should be considered part of
8 overhead. There were a whole -- there were a series of
9 questions that I raised.

10 Certainly, here you've raised the objection, and it is
11 at the retention stage, not at the fee application stage. I
12 guess the one thing that I said and would still adhere to here
13 is that 327 is not the issue. And I guess the supplemental
14 declaration says that -- the supplemental declaration of John
15 Dempsey, paragraph 8: "Mercer customarily requests and
16 receives similar reimbursement rights from its clients."

17 That same paragraph 8 says that, "To date, Mercer's
18 outside legal fees are estimated at less than \$6,000. Mercer
19 will only seek reimbursement from the debtors of those legal
20 fees that were performed solely on behalf of Mercer."

21 I guess -- I'll let you -- you can say more if you
22 want. I don't know how far you explored this. I mean, I don't
23 think -- the Borders -- I adhere to what I said in Borders.
24 But what I said in Borders is more complicated in a situation
25 such as the one where you've raised your objection now.

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1 MR. MASUMOTO: Well, Your Honor, as to -- it seems
2 that the issue of inquiry as to whether it would be part of
3 overhead is actually part of the objection that the U.S.
4 Trustee has raised --

5 THE COURT: I know.

6 MR. MASUMOTO: -- in the past. And I don't know
7 whether or not, again, within the parameters of the judge's
8 decision in Borders, indicating that if they customarily bill
9 it outside, whether that disposes of the inquiry as to whether
10 or not it's treated as part of their overhead.

11 In addition, we assume that even in accordance with
12 the Borders decision, going forward, to the extent that they
13 have -- if they use outside counsel to review their time
14 records and so forth, within the prohibited categories, that
15 that would still be subject to an objection and disallowance at
16 the fee application stage.

17 THE COURT: All right.

18 MR. MASUMOTO: As to whether or not fee app
19 preparation, on the other hand, I think that may be probably
20 the most outstanding issue related to going forward, the issue
21 of whether or not outside counsel could prepare their fee
22 application and include that as reimbursement, is a frequent
23 concern that arises.

24 At this stage, the services for being retained are
25 identified at 6,000. But going forward, the ones that we've

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1 seen to be included among the permissible services argued by
2 the financial advisors is that fee application preparation
3 should also be included and permitted by outside counsel. If
4 the Court's inclined to clarify that point at the outset, I
5 think it might help the parties. I think they're on notice
6 with respect to the impermissible types of services.

7 THE COURT: Well, let me say, if I approve the
8 retention as presented, I believe, and I'm making it clear now,
9 that because it's -- it then becomes part of actual necessary
10 expenses, and the issue under actual and necessary expenses
11 leaves it to the Court to review the detailed application. As
12 occurred in Borders, I think initially it was just listed as an
13 expense item and the Court requested and received detailed fee
14 statement from Freeborn & Peters, which I guess is also the
15 same counsel here.

16 MR. MASUMOTO: Same firm.

17 THE COURT: And we reviewed that in detail for
18 reasonableness; also looked at it and disallowed a very small
19 portion of the fees because it appeared to the Court to be work
20 for the estate as opposed solely for Mercer. And the
21 engagement letter here, I think make clear. It says on page 3,
22 "In addition to such compensation, we also bill for necessary
23 travel and other expenses related to the services requested,
24 including legal fees associated with our retention, subsequent
25 fee application with the U.S. Bankruptcy Court, if required,

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1 and any request of participation in contested matters of
2 litigation, such as depositions, responding to subpoenas or
3 discovery requests and court testimony."

4 So I mean, in Borders I decided, and would adhere to,
5 that because lawyers can charge for preparation of their fee
6 applications that other professionals can. And it would
7 frequently be the case that lawyers would be used in connection
8 with retaining it. When I review the fees to conclude whether
9 they're reasonable, and I'm definitely going to -- assuming I
10 approve the application -- everybody ought to understand,
11 Mercer needs to understand, I would do it expressly with the
12 understanding, the Court reserve the right to review the
13 specific amount of fees sought in connection with preparation
14 of fee applications.

15 In Borders I think I cited some cases that
16 distinguished between preparation of fee applications and the
17 cost of "defending" a fee application if it's challenged. That
18 may or may not -- Judge Bernstein -- I cited to one of Judge
19 Bernstein's decisions on that. And I do see that distinction
20 and would adhere to that distinction.

21 And Mr. Masumoto, are you objecting to the indemnity
22 concept?

23 MR. MASUMOTO: No. With respect to indemnity,
24 usually, in fact, explicitly the provisions under the indemnity
25 provisions allow attorneys representing the professional with

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1 respect to indemnification issues. That is one attorneys' fees
2 that we explicitly allow, subject to, again, all of the normal
3 guideline restrictions that apply.

4 THE COURT: You know, I said in Borders at 456 B.R.
5 208, "Professionals may only be compensated in bankruptcy cases
6 for reasonable fees and expenses, taking into consideration
7 customary fees in bankruptcy and nonbankruptcy matters,"
8 referring to General Order M-389. "If a professional does not
9 charge for counsel fees for negotiating retention in
10 nonbankruptcy matters, then such charges are inappropriate in
11 bankruptcy cases. Expense reimbursement should also bear a
12 reasonable relationship to the likely amount of the
13 professional's compensation. Caps on the amount of
14 reimbursable expenses can also be negotiated. But where the
15 fees are incurred in representing the professionals and not in
16 performing work for the debtor, Section 327 does not apply."

17 Mr. Marinuzzi, is there an estimate of what the total
18 fees for Mercer are likely to be in the case? I mean, nobody
19 took me up on my invitation to negotiate a cap for what -- I
20 mean, I don't know. Has the clock stopped running on the fees
21 on retention?

22 MR. MARINUZZI: Well, Your Honor, I think in theory --
23 well, actually no, insofar as counsel is on the phone right
24 now. I --

25 THE COURT: Well, I hope they like listening. But I'm

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1 not sure I would reimburse them for the expenses of listening
2 in today. Okay?

3 MR. MARINUZZI: Okay. I guess --

4 THE COURT: They might take that into account when
5 then put in a fee application.

6 MR. MARINUZZI: -- I guess, Your Honor, my response
7 is, it will depend in large measure on how much work is done in
8 connection with the KEIP KERP and frankly how much opposition
9 there is to the KEIP KERP.

10 THE COURT: Well, the U.S. Trustee always objects to a
11 KEIP KERP.

12 MR. MARINUZZI: And we hope to work through those
13 issues before we actually file the motion. We intend to
14 provide them with a draft. We hope to work through the issues
15 with the committee. We really want to try to minimize the time
16 in front of the Court as well as deposition time.

17 In the context of this case, Your Honor, obviously,
18 this is not going to be a large expense. Having said that, I
19 don't know that I can suggest a cap. I just don't know.
20 They've incurred 6,000 to date. If they have to attend and
21 prepare for depositions --

22 THE COURT: I'm just talking about retention right
23 now.

24 MR. MARINUZZI: Retention? I --

25 THE COURT: The indemnification issue, I think Mr.

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1 Masumoto has already indicated -- if Mercer's going to be
2 deposed in connection with a KEIP and KERP, for example, Mr.
3 Masumoto, I guess you wouldn't disagree they're entitled to
4 have counsel represent their people at a deposition?

5 MR. MASUMOTO: That's correct, Your Honor.

6 THE COURT: Okay.

7 MR. MASUMOTO: To the extent that they need to
8 represent --

9 THE COURT: So that's not the issue, Mr. Marinuzzi.

10 MR. MARINUZZI: Okay. All right. Your Honor, if
11 we're talking specifically about retention issues, I would just
12 defer to counsel for Mercer, who is on the phone now.

13 THE COURT: Okay.

14 MR. EGGERT: Yes, Your Honor. This is Devon Eggert of
15 Freeborn & Peters on behalf of Mercer. In the supplemental
16 declaration, we indicated that to date for retention the amount
17 was less than 6,000. And assuming the retention application
18 would be granted today, there would be no more time for
19 retention. And we're mindful of the Court's request to not
20 seek reimbursement for the time spent for this hearing.

21 THE COURT: Thank you. You could seek it, but --

22 MR. MARINUZZI: Your Honor, we agreed that they
23 wouldn't fly out here for this hearing to save expense.

24 THE COURT: Is someone here from Mercer?

25 MR. MARINUZZI: Your Honor, the declarant, John

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1 Dempsey is on the phone.

2 THE COURT: All right. Mr. Dempsey, what I would like
3 to know is, you say in your supplemental declaration that
4 Mercer customarily requests and receives similar reimbursement
5 rights from its clients. What I'd like to know is, outside of
6 bankruptcy matters, do you regularly receive -- not request,
7 but receive reimbursement for counsel fees in connection with
8 your engagement?

9 MR. DEMPSEY: We receive reimbursement for our -- for
10 when we engage outside counsel in connection with litigation.

11 THE COURT: That wasn't my question. That wasn't my
12 question. My question -- I'm focusing -- the issue in my mind,
13 Mr. Dempsey, is whether retention is really built into
14 overhead. And so my question specifically is with respect to
15 your retention, whether you regularly charge for and receive
16 reimburse -- do you use outside counsel for retention in
17 nonbankruptcy matters?

18 MR. DEMPSEY: No we do not. But --

19 THE COURT: Do you --

20 MR. EGGERT: Your Honor, this is --

21 THE COURT: Just a second.

22 MR. EGGERT: -- Devon Eggert of --

23 THE COURT: No. Let's -- answer my questions. Then
24 I'll let you say what you want.

25 Do you have inside counsel?

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1 MR. DEMPSEY: We do. Which is corporate counsel.

2 They're not specialists in bankruptcy.

3 THE COURT: Well, but do they review -- your
4 engagement letter is boilerplate. Does your inside counsel
5 review retention applications before they're signed in
6 nonbankruptcy matters?

7 MR. DEMPSEY: Only -- well, there are not retention
8 applications --

9 THE COURT: Well, not applications. Engagement
10 letters. I mean, look, Mr. Marinuzzi, here's the thing that's
11 bothering me, and I said this in the Borders opinion. I wanted
12 to know -- in order to get reimbursed for counsel expenses in
13 connection with retention, you have to look to both bankruptcy
14 and nonbankruptcy matters. And I mean their engagement letter
15 is pure boilerplate, okay. And I don't -- yes, engagement in a
16 bankruptcy matter, retention in a bankruptcy matter, requires
17 more work than in a nonbankruptcy matter. But it seems -- do
18 you know whether they have been reimbursed for their outside
19 counsel fee -- do they use outside counsel, Mr. Marinuzzi, in
20 their retention in all bankruptcy matters?

21 MR. MARINUZZI: Your Honor, I don't know the answer to
22 that.

23 THE COURT: So I want to see another supplemental
24 declaration. I want to know whether they use outside counsel
25 in retentions in all bankruptcy matters; whether they have

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1 received reimbursement for outside counsel fees in all
2 bankruptcy matters. I don't want it to become automatic that
3 if they apply for retention in the Southern District of New
4 York, they simply get it. That was -- I mean, in Borders I
5 made clear, it would be a different -- it was a different issue
6 if the objection was raised at the time of retention. That's
7 what's happened here.

8 And so I'm not satisfied -- I mean, the 6,000 dollars
9 standing alone is not an inordinately high figure. That's not
10 my problem with it. But I don't understand why it's not built
11 into their overhead. Are they using the same rates -- do they
12 use the same rates in bankruptcy and nonbankruptcy matters? I
13 want to know more.

14 MR. MARINUZZI: That's fine, Your Honor.

15 THE COURT: Okay.

16 MR. MARINUZZI: We'll work with Mercer to provide --

17 MR. EGGERT: Your Honor, this is Devon Eggert. May I
18 just add just a small point of clarification?

19 THE COURT: Go ahead.

20 MR. EGGERT: If I may? The question about if Mercer
21 uses outside counsel outside of bankruptcy. The amounts
22 incurred to date relating to retention, that does not have any
23 time with respect to negotiating the engagement letter. That
24 deals only with the retention application. So if Mr. Dempsey
25 is negotiating with a potential client on an engagement letter

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1 for compensation services, we are typically not involved at
2 that point.

3 THE COURT: Does Mercer have a different fee structure
4 for matters involving companies that are in a Chapter 11
5 proceeding versus nonbankruptcy matters?

6 MR. EGGERT: I think I would have to defer to John
7 Dempsey on that question.

8 THE COURT: Mr. Dempsey?

9 MR. DEMPSEY: Yes, this is John Dempsey. No, we
10 charge the same hourly rates inside and outside of bankruptcy.
11 And we charge -- we are reimbursed for legal expenses
12 associated with work on behalf of the client. And the contract
13 negotiation of engagement letters, as Devon has noted, is a
14 separate process from this process of getting retained in
15 Court, which is unique to bankruptcy. And we have -- we always
16 have this provision for seeking reimbursement, because it's a
17 special thing we do on behalf of our clients because we are
18 asked by the debtor's counsel to go down this process of
19 getting retained.

20 THE COURT: So --

21 MR. DEMPSEY: This is something the client is
22 triggering that we have to do.

23 THE COURT: Mr. Marinuzzi, I specifically said in the
24 Borders decision at 456 B.R. 208, "If a professional does not
25 charge for counsel fees for negotiating retention in

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1 nonbankruptcy matters, then such charges are inappropriate in
2 bankruptcy cases."

3 MR. MARINUZZI: What I think I heard is they're not
4 charging for negotiation of the engagement letter; it's the
5 retention application that they're charging for.

6 THE COURT: And this said retention, it didn't say
7 engagement letters. So --

8 MR. EGGERT: Well, Your Honor, Devon Eggert for
9 Mercer. Just one last point. I mean, there really aren't any
10 charges for retention outside of bankruptcy. And I think that
11 was what Mr. Dempsey was getting at, is that the unique nature
12 of a bankruptcy case and needing to be retained is why there's
13 a charge for retention in a bankruptcy case, but there's no
14 charge for retention outside of bankruptcy.

15 And when he enters into these engagements before a
16 company files for bankruptcy, this provision is in here in the
17 event the bankruptcy actually occurs. There are engagements
18 where he has this provision but the company does not file for
19 bankruptcy. But that provision is still in those engagement
20 letters.

21 MR. MASUMOTO: Excuse me, Your Honor. If I may? I
22 believe you quoted to the supplement previously in paragraph 8
23 where it says, "Mercer customarily requests and receives
24 similar reimbursement rights from its clients," which seems to
25 suggest that they are asking for reimbursement for attorneys'

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1 fees outside of bankruptcy, contrary to, I guess, what was just
2 stated. So maybe just a --

3 THE COURT: Well, I think what they're saying is they
4 don't -- the language may be there, but outside of bankruptcy
5 they don't need -- they have the right, but outside of
6 bankruptcy they don't use outside counsel, because they don't
7 have to do a retention application. So --

8 MR. EGGERT: That's correct, Your Honor. It's never
9 triggered.

10 THE COURT: -- right, it's not triggered. The
11 language is there, it's just not triggered. And look, I'm
12 mindful of that. I guess -- is there somewhere in the
13 declarations that it indicates that Mercer charges the same
14 hourly rates for matters that are in bankruptcy and outside of
15 bankruptcy?

16 MR. EGGERT: Your Honor, in paragraph 15 of the
17 original declaration, it says, "The fee structure and other
18 provisions of the engagement letter are consistent with the
19 terms of other Mercer engagements, both in and out of
20 bankruptcy court proceedings."

21 THE COURT: Okay, thank you. Mr. Masumoto?

22 MR. MASUMOTO: Your Honor, if Your Honor is satisfied
23 that the overhead issue has been resolved, we'll defer to the
24 Court's order. But if they're only charging for the retention
25 application, which does not exist outside of bankruptcy, the

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1 issue of overhead is not fully addressed.

2 From our standpoint, we believe that it should be,
3 even in the bankruptcy context, part of the cost of doing
4 business. I mean, many people interview before committees and
5 they incur the cost of what we refer to as a "beauty contest".
6 And if they're not, obviously, selected, they can't apply to
7 the estate for the cost of seeking to be retained. Similarly,
8 the cost of being retained in the bankruptcy context, we
9 believe, should be absorbed by the professional.

10 And particularly so in cases, as with Mercer, where
11 you have a sometimes not strictly an hourly rate. Particularly
12 with financial advisors, there's always the concern that in
13 essence, they're sort of farming off the cost of the expense.

14 THE COURT: I think the financial advisor, because the
15 fee structure is different, it's not an hourly basis, raises a
16 bigger issue about whether it's part of overhead or not, than a
17 professional that's billing strictly on an hourly basis.

18 MR. MASUMOTO: Understood, Your Honor. It's just
19 that, from our standpoint, we believe that even with hourly
20 professionals -- as Your Honor indicated, we're particularly
21 concerned with the financial advisors and fixed monthly
22 compensation -- but even with the hourly professionals, as
23 indicated, we believe that the cost of being retained should be
24 borne by the professional.

25 Many times, Your Honor, especially in the large cases,

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1 you have complex issues. And some of those complexities and
2 conflicts arise because of the nature of the professionals
3 themselves. It's not the bankruptcy per se, but the nature of
4 their relationships to other parties and so forth. And if they
5 undertake to be retained under that circumstance, it seems only
6 fair that they should bear the cost, and not the estate. It's
7 not the estate that has established those connections, it's the
8 professionals.

9 And so whatever is unique to that professional -- if a
10 professional comes in with no conflicts at all, there should be
11 very little cost to that professional and presumptively to the
12 estate, if the estate bears the cost. So from our standpoint,
13 it should be, for all professionals, hourly or not, a matter of
14 their costs.

15 MR. MARINUZZI: Your Honor --

16 THE COURT: Go ahead, Mr. Marinuzzi.

17 MR. MARINUZZI: -- if I could just respond to that? I
18 also, obviously, read the Borders decision. And what I took
19 away from it on the overhead issue is that it wasn't overhead
20 for Mercer, as the Court ruled last time, notwithstanding the
21 context. I don't know that it made a difference whether the
22 objection was asserted at the beginning or the end, for
23 purposes of determining whether these fees are overhead. And
24 Your Honor concluded it wasn't overhead for the same firm, less
25 than a year ago. I don't know that the fact that it's being

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1 asserted now versus at the fee application time changes that
2 conclusion. But obviously, it's Your Honor's decision.

3 THE COURT: Anybody else wish to be heard with respect
4 to the Mercer retention?

5 (Pause)

6 THE COURT: I'm going to approve the Mercer retention
7 application with the following caveats. I intend to review the
8 fees incurred, as will be with expenses, very carefully. So
9 because simply saying that fees in connection with retention
10 should be reimbursable expenses, I am very mindful of the issue
11 that Mr. Masumoto raises about conflicts. So where protracted
12 work is required in connection with retention, because of the
13 professional's connections and contacts and potential
14 conflicts, I might well disallow those fees.

15 There's no question that because bankruptcy requires a
16 retention application for professionals such as Mercer, and
17 that this is a legal context, and therefore it does seem
18 appropriate to the Court for them to use professionals in doing
19 so, I'm not categorically excluding reimbursement for those
20 expenses. It becomes a question of why don't they use their
21 own inside counsel for doing it versus outside counsel.
22 Mercer's been using outside counsel for it.

23 But when I review the fee application, I don't know at
24 this stage -- I know they've said it's approximately less than
25 6,000 dollars that's been incurred to date -- I don't know

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1 without looking at the detailed time entries what that 6,000
2 dollars was incurred for doing -- what did they do for that.

3 So if the Court subsequently determines that the
4 issues in a particular retention arose because of conflicts
5 issues, for example, I might well conclude no, that shouldn't
6 be a reimbursable expense. If the professional decides they
7 want this engagement and their other -- work for other clients
8 presents complications for them, and they're seeking advice
9 from counsel on that, I might well just disallow it. I'm not
10 categorically -- in saying I will approve the engagement that
11 includes reimbursement for their expenses in connection with
12 retention, that should not be taken as a categorical approval
13 of whatever shows up in a fee application.

14 And if the fee application is not sufficiently
15 revealing of what they did, I'm going to ask for more detail
16 about it. Okay? So that will be -- I will approve the
17 retention application.

18 I think, just so we're clear, the preparation of fee
19 applications, there, as I said in the Borders decision, subject
20 to reviewing the fees for reasonableness, I think that's
21 appropriate. And Mr. Masumoto's raised no question about the
22 indemnity issue. Okay.

23 MR. MARINUZZI: Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Masumoto. Thank you, Mr.
25 Marinuzzi.

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1 MR. MARINUZZI: Thank you, Your Honor. Your Honor,
2 the last retention application on the calendar today is the
3 committee's application to retain counsel, Kramer Levin. I'd
4 cede the podium to Kramer Levin.

5 THE COURT: Is Rubenstein on?

6 MR. MARINUZZI: Oh, I apologize, I missed it. You're
7 right. Thank you. Your Honor, the last retention application
8 on the debtors' side is the debtors' application to retain
9 Rubenstein Associates as corporate communications consultants.
10 There was an objection by the U.S. Trustee regarding billing in
11 quarter hour increments, and they've decided to bill in tenths
12 of an hour increments to satisfy that objection.

13 THE COURT: And the Court noted that with respect to
14 the reimbursement for counsel fees, it did not include -- in
15 connection with retention -- it was essentially the indemnity.

16 MR. MARINUZZI: Indemnity, right.

17 THE COURT: Mr. Masumoto, anything that you want --

18 MR. MASUMOTO: No, thank you, Your Honor.

19 THE COURT: All right. That's approved.

20 MR. MARINUZZI: Thank you, Your Honor. And now I'll
21 cede the podium to Kramer Levin.

22 THE COURT: Okay.

23 MR. ECKSTEIN: Your Honor, good morning. Kenneth
24 Eckstein, Kramer Levin, proposed counsel for the creditors'
25 committee. I was hoping I could rely on Mr. Marinuzzi, but I

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1 guess I couldn't on this one, so I'll present it myself.

2 Your Honor, we submitted our retention application in
3 connection with our representation of the creditors' committee.
4 We reviewed it with the U.S. Trustee. We didn't receive any
5 objections. So unless Your Honor has any questions, we would
6 respectfully request approval of the motion.

7 THE COURT: Does anybody wish to be heard with respect
8 to the Kramer Levin retention application?

9 All right. It's approved as well.

10 MR. ECKSTEIN: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. LEE: Good morning, Your Honor. Gary Lee from
13 Morrison & Foerster, counsel for the debtors. I think I can
14 say that now, subject to the order. The last item, I think, on
15 the agenda, is the status conference on our motion for a final
16 order approving the servicing agreement between the debtors and
17 Ally Bank.

18 Your Honor, there have been very serious discussions
19 between the debtors, the committee, and Ally, regarding this
20 motion. And the parties have agreed that it would be the
21 professionally responsible thing to do to give the business
22 principals some time to talk here about the motion. It's an
23 important motion. I think, as we said, it's one of the
24 cornerstones of the entire case. And so in that regard, the
25 proposal, Your Honor, is, that the debtors will adjourn the

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1 status conference until July the 24th, and the hearing until
2 August the 8th.

3 The debtors are going to file a supplemental
4 declaration, Your Honor on Monday. We've shared a draft of
5 that declaration with the committee. And it will set out
6 further details regarding the motion and why it's a critical
7 component of the case.

8 We are working on a discovery schedule with the
9 committee. If there is a need for an evidentiary hearing on
10 August the 8th -- and in the meantime there have been informal
11 productions of documents. We've received a formal request, and
12 we're in the process of compiling that. So in the event there
13 is a hearing, nobody is caught by surprise and loses any time.

14 THE COURT: Mr. Lee, tell me, the anticipated schedule
15 is that it'll come before the Court when?

16 MR. LEE: On August the 8th.

17 THE COURT: And are you requesting that the August 8th
18 hearing be an evidentiary hearing if necessary?

19 MR. LEE: Your Honor, in the event that the parties
20 are unable to reach any kind of resolution -- and we hope to be
21 at a report on that by July the 24th -- the committee's
22 indicated that they believe the next hearing will need to be an
23 evidentiary hearing. The intend to call witnesses. And I
24 believe the debtors will need to do the same. So, yes, Your
25 Honor, if possible, August the 8th would be an evidentiary

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1 hearing.

2 THE COURT: I don't think so. Because I have MF
3 Global in the morning and the ResCap KEIP KERP motion --

4 MR. LEE: Which is also mine, Your Honor.

5 THE COURT: -- is scheduled for 2 o'clock. It's on
6 the calendar for 2 o'clock. I don't want to anticipate whether
7 the U.S. Trustee or the creditors' committee will object to the
8 KEIP KERP motion, but I haven't seen a KEIP or KERP that hasn't
9 been objected to -- I don't think ever, but --

10 MR. LEE: Well, Your Honor, we'll work very hard
11 between now and then to ensure that there aren't any. We've
12 actually had discussions with the committee regarding the KEIP
13 and KERP, and we are in the process of engaging with the U.S.
14 Trustee on that too. But you're right, it might be ambitious.

15 But for various reasons, Your Honor -- I apologize for
16 interrupting -- there are some fairly important reasons why it
17 can't slip much beyond August the 8th. The reason is because
18 the bank, which is the counterparty to this agreement, is a
19 regulated entity. And the FDIC is watching what we're doing
20 quite carefully and we wanted to get the --

21 THE COURT: Yes --

22 MR. LEE: -- I appreciate -- every regulator under the
23 sun is watching what we're doing quite carefully. But we are
24 under a certain amount of pressure to get the first hearing
25 date that we can.

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1 THE COURT: Well, I don't find that to be -- the fact
2 that the FDIC is keeping a close watch is not necessarily
3 persuasive of having an evidentiary hearing on it. Part of my
4 problem is that I'm out of town the week before. I'm committed
5 to always being prepared when I have a hearing in advance.

6 MR. LEE: I have had that experience, Your Honor, yes.

7 THE COURT: And so the question is, will the schedule
8 allow enough time for me to feel fully prepared. I'm not sure
9 if I can do that. I'm not asking you to give me a preview all
10 of the issues, but what issue do you -- if there has to be an
11 evidentiary hearing, what issues do you anticipate will require
12 an evidentiary hearing?

13 MR. LEE: I'm going to try and keep my comments
14 neutral, because the parties are engaged in --

15 THE COURT: I understand that.

16 MR. LEE: -- fairly sensitive negotiations. I think,
17 Your Honor, the principal issues --

18 THE COURT: Well, let me stop you for a second.

19 MR. LEE: Yes.

20 THE COURT: I don't want to do anything to upset --

21 MR. LEE: Thank you, Your Honor.

22 THE COURT: -- delicate discussions in an effort to
23 work this out.. You're going to be back here on July 24th?

24 MR. LEE: Yes, Your Honor.

25 THE COURT: We're going to put this on for a status

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1 conference on July 24th.

2 MR. LEE: Yes, Your Honor.

3 THE COURT: And at that time, I expect a fuller
4 discussion. And if necessary, we'll talk about exactly what
5 the Court requires if there's going to be an evidentiary
6 hearing, and what that will -- you're also on the calendar for
7 August 14th.

8 MR. LEE: Yes.

9 THE COURT: I don't know -- I mean I see a lot of
10 matters listed on the calendar for August 14th. There's a lot
11 of stay relief motions. I don't know if we will have them or
12 not it or not, or whether -- what those will entail.

13 So it's possible, Mr. Lee, that August 14th will be
14 the date for an evidentiary hearing. And if necessary, start
15 thinking now about which of the ResCap matters that are on the
16 calendar for August 14th can be moved. Right now there's
17 nothing on the calendar on August 14th other than lift stays.

18 MR. LEE: Your Honor, may I ask a quick question? Did
19 we have a holding date on the 9th, or has that gone already?

20 THE COURT: You're on the calendar for the 9th. You
21 have retention applications for Deloitte, KPMG, continued
22 hearing if necessary for KEIP and KERP.

23 MR. LEE: I hope not, Your Honor.

24 THE COURT: I didn't put these entries in there. I've
25 got Borders for the 10th.

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1 MR. LEE: Would it be possible, Your Honor, just to
2 tentatively set it for the 9th?

3 THE COURT: Well, it comes back --

4 MR. LEE: Or is that --

5 THE COURT: -- to the same problem.

6 MR. LEE: Okay.

7 THE COURT: How much preparation is going to be
8 required for me.

9 MR. LEE: I understand, Your Honor.

10 THE COURT: And I'm away the prior week. It's -- I'm
11 not -- let's talk about it on the 24th.

12 MR. LEE: Okay. And I'll commit, there'll be a full
13 preview of the issues on the 24th. We would have done it
14 today, but for the fact that the parties are engaged.

15 THE COURT: That's fine.

16 MR. LEE: Thank you.

17 THE COURT: I don't want to upset discussions that are
18 constructive discussions.

19 Just, ordinarily, Mr. Lee, on anything that's a
20 contested matter requiring an evidentiary hearing that's at all
21 complicated, I want papers a week in advance.

22 MR. LEE: I see.

23 THE COURT: And that may be possible for you, but I
24 won't be here for -- I'll be here for part of the week, but not
25 all of the week. And it limits my preparation.

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1 MR. LEE: And I can guarantee it will be complicated,
2 so.

3 THE COURT: We'll see on the 24th.

4 MR. LEE: Okay, thank you, Your Honor.

5 THE COURT: Thank you. Mr. Eckstein?

6 MR. ECKSTEIN: Your Honor, Kenneth Eckstein, of Kramer
7 Levin, counsel for the creditors' committee. I'm going to
8 begin by concurring with Mr. Lee that this will be complicated.
9 And I think it will be --

10 THE COURT: Sufficiently complicated that if there's
11 an evidentiary hearing, it's going to be more than one day?

12 MR. ECKSTEIN: Potentially, yes. I think that in the
13 first instance, we concur with the judgment to adjourn today's
14 status conference. There were fairly significant discussions
15 that took place this week among the professionals about this
16 motion. And I think all parties have concurred that it would
17 be appropriate for the principals to meet.

18 THE COURT: And I'm not pressing the issue --

19 MR. ECKSTEIN: I understand. I do think, Your Honor,
20 that there are issues about this motion that do require
21 significant additional disclosure. And we have been assured by
22 Mr. Lee that a significant additional submission is going to be
23 made, which we think will be very important, and obviously
24 would be something that all parties are going to want to react
25 to. And I think that would also justify adjourning the motion.

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1 The issue does go to the heart of the relationships
2 between ResCap and Ally and the operations of the business and
3 what is and is not appropriate in terms of payments during the
4 Chapter 11 case, in contrast to what might be appropriate to be
5 dealt with in connection with a plan, both in terms of pre-
6 petition obligations and post-petition obligations and how
7 those should be allocated.

8 We think it would be useful if we can bring to the
9 Court a resolution. We think that would be worthwhile to
10 pursue. We think that we should use the 24th as a date to
11 review the issues. And I think that that could advance the
12 ball quite significantly, because I think Your Honor will hear
13 the issues. And my sense is that without an evidentiary
14 hearing we can probably frame a lot of the factual issues,
15 which are, I think, more important in many respects, and more
16 difficult than the legal issues. I think the legal issues are
17 important, obviously, but I don't think that's where the big
18 controversy and complexity arises.

19 So I think using the 24th will allow everybody to
20 assess what is necessary. And there's obviously a real
21 possibility that by the 24th we'll have made business progress.
22 And I imagine if we can make progress, maybe we'll be able to
23 arrange to submit an order earlier and get the matter resolved
24 without the need for a lengthy and contentious hearing.

25 But at this point, I think, we're prepared to proceed

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1 along the lines of let's have the discussions. They're going
2 to be scheduled for next week. And I think, for now, it would
3 probably be useful if we could use a response holding date for
4 either August 1st or August 2nd, which would be a week in
5 advance of August 8th or August 9th, which is what we were
6 anticipating. I think the intention was to work out a
7 discovery schedule with Mr. Lee, which I imagine we'll have in
8 place, certainly before the 24th. We haven't had any problems
9 in working out discovery. And we can bring back the specific
10 issues to Your Honor on the 24th, depending upon where the
11 matter stands.

12 THE COURT: Okay. Let's see where things stand on the
13 24th. Okay?

14 MR. ECKSTEIN: Thank you.

15 THE COURT: Thank you, Mr. Eckstein.

16 Mr. Marinuzzi? I'm sorry. Go ahead, Mr. Lee.

17 MR. LEE: Apologies, Your Honor. Just one additional
18 point. Gary Lee from Morrison & Foerster. Ally has agreed to
19 extend the provision in the DIP that would otherwise
20 automatically default by virtue of the fact that we won't have
21 gotten approval for this agreement by, I believe it's the end
22 of the month. So we're able to carry over. I just wanted to
23 bring that to the Court's attention, that they've agreed to
24 work with us on that, too.

25 THE COURT: Thank you, Mr. Lee.

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1 MR. LEE: Thank you.

2 THE COURT: All right. Anything else, anybody wants
3 to raise? Mr. Marinuzzi?

4 MR. LEE: No, Your Honor. Thank you very much, again.

5 THE COURT: All right. We're adjourned. Thank you
6 very much. Everybody have a good weekend.

7 (Whereupon these proceedings were concluded at 11:04 AM)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

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New York, NY 10040

Date: July 16, 2012

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